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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

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11 YAHSHALOM B.J. GRAY,

12 Plaintiff,

13 v.

14 L.A. COUNTY SHERIFF DEPT., et al.,

15 Defendants.

Case No. 2:23-cv-01424-JLS-SHK

**ORDER DISMISSING CASE**

16  
17 **I. BACKGROUND**

18 On February 8, 2023, Plaintiff Yahshalom B.J. Gray (“Plaintiff”)   
19 constructively filed<sup>1</sup> a civil rights complaint (“Complaint”) under 42 U.S.C. § 1983   
20 (“§ 1983”) against the Los Angeles County Sherriff’s Department (“LACSD”) and   
21 individuals Jonathan Hill, J. Harris, J. Tobias., F. Meier, Butao, Bautista, Castillo,   
22 Clark, Carrillo, and Calderon in their individual and official capacities   
23 (collectively, “Individual Defendants” and together with LACSD, “Defendants”).   
24 Electronic Case Filing Number (“ECF No.”) 1, Compl. Plaintiff filed two   
25 amended complaints that were both dismissed with leave to amend, and, on   
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27 <sup>1</sup> Under the “mailbox rule,” when a pro se prisoner or detainee gives prison or jail authorities a   
28 pleading to mail to court, the court deems the pleading constructively “filed” on the date it is   
signed. Douglas v. Noelle, 567 F.3d 1103, 1108 (9th Cir. 2009).

1 September 4, 2024, Plaintiff constructively filed the operative TAC, in which  
2 Plaintiff alleged that Defendants violated his First, Fourth, and Fourteenth  
3 Amendment rights. ECF No. 30, TAC, at 17-25.

4 On November 1, 2024, the assigned Magistrate Judge issued a Report and  
5 Recommendation (“R&R”) that Plaintiff’s “official capacity claims and the  
6 Fourteenth Amendment claims in Plaintiff’s TAC” be dismissed with prejudice.  
7 ECF No. 31, R&R at 12. On January 14, 2025, the District Judge accepted the  
8 findings and recommendations in the R&R (“Order Accepting”) and dismissed  
9 Plaintiff’s official capacity and Fourteenth Amendment claims from the TAC.  
10 ECF No. 33, Order Accepting at 1.

11 On January 29, 2025, the Court issued an Order Regarding Service of the  
12 TAC (“Service Order”), authorizing Plaintiff to serve the TAC, R&R, and Order  
13 Accepting, utilizing the United States Marshals Service (“USMS”), on the  
14 Individual Defendants in their individual capacities. ECF No. 34, Service Order at  
15 1. Plaintiff was ordered to file a “Notice of Submission” with the Clerk of Court  
16 by February 21, 2025, “indicating that the completed USM-285 form(s) have been  
17 provided to the Clerk of the Court.” Id. at 2. Plaintiff was warned that “[i]f  
18 Plaintiff does not submit the completed USM-285 forms and file the Notice of  
19 Submission by **February 21, 2025, this action will be subject to dismissal**  
20 without prejudice for Plaintiff’s failure to comply with the Court’s order and/or  
21 Plaintiff’s failure to prosecute.” Id. (emphasis in original).

22 Plaintiff failed to timely file a Notice of Submission with the Clerk of Court  
23 as ordered. Therefore, on March 6, 2025, the Magistrate Judge issued an Order to  
24 Show Cause (“OSC”), requiring Plaintiff to respond within fourteen days of the  
25 OSC issuing, March 20, 2025, “why the Court should not dismiss his claims  
26 against Defendants for failure to serve and/or failure to prosecute.” ECF No. 35,  
27 OSC at 1. Plaintiff was advised that “[i]f Plaintiff wishes to proceed with this  
28 lawsuit against these Defendants,” Plaintiff must: “(1) complete the USM-285

1 forms, . . . and file the completed forms with the Clerk of Court along with a  
2 Notice of Submission,” or “(2) show cause in writing why this action should not be  
3 dismissed for failure to serve and/or failure to prosecute.” *Id.* Plaintiff was  
4 warned that **“the Court will deem his failure to timely file a response to th[e**  
5 **OSC] as consent to the dismissal of this action in its entirety without**  
6 **prejudice.”** *Id.* at 2 (emphasis in original).

7 As of the date of this Order, Plaintiff has failed to: (1) show cause why this  
8 case should not be dismissed; (2) file a Notice of Submission with the Clerk of  
9 Court; or (3) otherwise participate in this litigation.

## 10 II. DISCUSSION

11 District courts have sua sponte authority to dismiss actions for failure to  
12 prosecute or to comply with court orders. See Fed. R. Civ. P. 41(b); Link v.  
13 Wabash R.R. Co., 370 U.S. 626, 629-30 (1962); Hells Canyon Pres. Council v.  
14 U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (stating courts may dismiss an  
15 action under Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff’s  
16 failure to prosecute or comply with the Federal Rules of Civil Procedure or the  
17 court’s orders); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992) (ordering  
18 dismissal for failure to comply with court orders).

19 In deciding whether to dismiss for failure to prosecute or comply with court  
20 orders, a district court must consider five factors: “(1) the public’s interest in  
21 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3)  
22 the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
23 cases on their merits; and (5) the availability of less drastic sanctions.” Henderson  
24 v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); see also Pagtalunan v. Galaza,  
25 291 F.3d 639, 642 (9th Cir. 2002) (setting out similar five factors as in Henderson).  
26 “Dismissal is appropriate ‘where at least four factors support dismissal, or where at  
27 least three factors ‘strongly’ support dismissal.’” Neal v. Reslan, No. CV 19-  
28 09291 PA (ASx), 2020 WL 754366, at \*1 (C.D. Cal. Jan. 16, 2020) (quoting

1 Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998). In a case  
2 involving sua sponte dismissal, however, the fifth Henderson factor regarding the  
3 availability of less drastic sanctions warrants special focus. Hernandez, 138 F.3d  
4 at 399.

5 Here, the first two factors—public interest in expeditious resolution of  
6 litigation and the Court’s need to manage its docket—weigh in favor of dismissal.  
7 Despite numerous warnings, Plaintiff has failed to respond to multiple Court orders  
8 and has failed to file the completed USM-285 forms and Notice of Submission to  
9 the Clerk of Court. This failure to prosecute and follow Court orders hinders the  
10 Court’s ability to move this case toward disposition and suggests Plaintiff does not  
11 intend to litigate this action diligently.

12 The third factor—prejudice to Defendants—also weighs in favor of  
13 dismissal. A rebuttable presumption of prejudice to a defendant arises when  
14 plaintiffs unreasonably delay prosecution of an action. See In re Eisen, 31 F.3d  
15 1447, 1452-53 (9th Cir. 1994) (citations omitted). Here, Plaintiff has not offered  
16 any excuse for his failure to comply with the Court’s orders and respond in a  
17 timely manner and this “prejudice” element thus favors dismissal.

18 The fourth factor—public policy in favor of deciding cases on the merits—  
19 ordinarily weighs against dismissal. However, it is Plaintiff’s responsibility to  
20 move litigation towards disposition at a reasonable pace and to avoid dilatory and  
21 evasive tactics. See Morris v. Morgan Stanley, 942 F.2d 648, 652 (9th Cir. 1991).  
22 Plaintiff has not met this responsibility despite having been: (1) instructed on his  
23 responsibilities; (2) granted sufficient time in which to discharge them; and (3)  
24 repeatedly warned of the consequences of failure to do so. Under these  
25 circumstances, though this policy favors Plaintiff, it does not outweigh Plaintiff’s  
26 failure to obey Court orders or to file responsive documents within the time  
27 granted.  
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1 The fifth factor—availability of less drastic sanctions—also weighs in favor  
2 of dismissal. The Court cannot move the case toward disposition without  
3 Plaintiff’s compliance with Court orders or participation in this litigation. Despite  
4 attempts by the Court to obtain a response, Plaintiff has shown he is either  
5 unwilling or unable to comply with Court orders by failing to file responsive  
6 documents or otherwise prosecuting this action. The Court is not aware of any  
7 lesser sanction that is available in this case. See Henderson, 779 F.2d at 1424  
8 (“The district court need not exhaust every sanction short of dismissal before  
9 finally dismissing a case but must explore possible and meaningful alternatives.”).

10 Accordingly, because it appears that Plaintiff has abandoned this litigation,  
11 and because Plaintiff has repeatedly defied Court orders, the Court **DISMISSES**  
12 this case, without prejudice.

13 **III. ORDER**

14 Based on the foregoing, IT IS ORDERED THAT Judgment be entered  
15 **DISMISSING** this case, without prejudice.

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18 DATED: March 28, 2025

  
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HONORABLE JOSEPHINE L. STATON  
United States District Judge

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20 Presented by:

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HON. SHASHI H. KEWALRAMANI  
United States Magistrate Judge